region6news

Friday, April 05, 2013

Arkansas, Louisiana, New Mexico, Oklahoma, Texas, and 66 Tribal Nations

Click bookmarks on the sidebar to jump to the full PDF version or click the web link to view the article online in your browser.

1 - Protest planned for ASARCO demolition Saturday, KFOX14, 4/4/13
http://www.kfoxtv.com/news/news/protest-planned-asarco-demolition-saturday/nXDCK/
Summary: With a little over a week until the demolition of the ASARCO smokestacks, the movement to stop their implosion will continue with a protest.

2 - Texas Brine to conduct depth test on cavern, BRADV, 4/4/13
http://theadvocate.com/home/5620095-125/texas-brine-to-conduct-depth
Summary: Texas Brine Co. plans to conduct a key test Tuesday on the depth of its failed Napoleonville Dome salt cavern, the suspected cause of a large sinkhole in Assumption Parish, company officials said.

3 - Exxon, EPA say air quality at spill in Arkansas improving, Reuters, 4/4/13
http://www.reuters.com/article/2013/04/04/us-exxon-pipeline-air-idUSBRE93319E20130404
Summary: (Reuters) - Air quality in the Arkansas neighborhood where an Exxon Mobil Corp pipeline leaked thousands of barrels of Canadian crude has improved but was still unhealthy where workers were cleaning it up, the company and the U.S. environment regulator said on Thursday.

4 - InsideClimate News Reporter Threatened With Arrest at Ark. Oil Spill Site, InsideClimateNews, 4/5/13
http://insideclimatenews.org/news/20130405/insideclimate-news-reporter-threatened-arrest-ark-oil-spill-site
Summary: InsideClimate News reporter Lisa Song was threatened with arrest on Wednesday after she entered the command center for the cleanup operation in Mayflower, Ark., where a major oil pipeline spill occurred on Friday.

5 - EPA Readies Radiation Guide, Inside EPA, 4/5/13
http://insideepa.com/EPA-Daily-News/Insider/menu-id-98.html
summary: EPA air chief Gina McCarthy's nomination to be the next agency administrator could get a boost after the White House completed a review of a long-pending EPA radiation guide:

6 - Oil Industry Claims EPA 'Tier III' Fuel Rule Would Yield 'Marginal' Benefits, Inside EPA, 4/5/13
http://insideepa.com/201304042430035/EPA-Daily-News/Daily-News/oil-industry-claims-epa-tier-iii-fuel-rule-would-yield-marginal-benefits/menu-id-95.html
summary: EPA's proposed "Tier III" fuel rule would produce only "marginal" emissions reductions benefits and is not necessary to help automakers meet tighter vehicle emission standards, according to the American Petroleum Institute's (API) latest analysis aiming to rebut EPA's and auto companies' support for the rule.

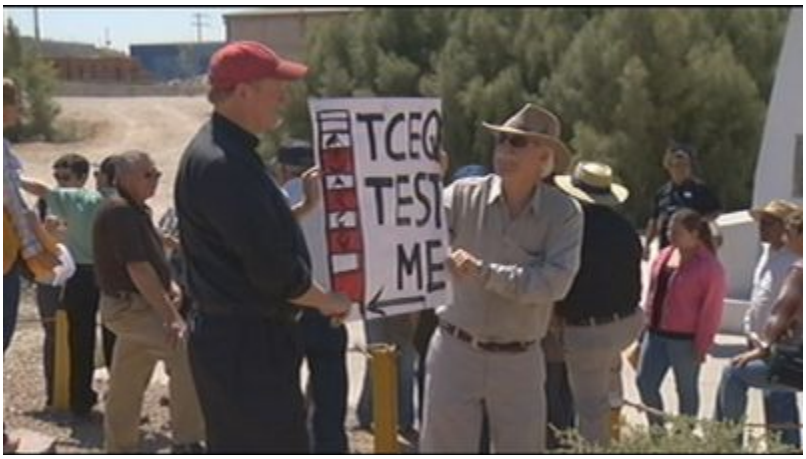
7 - Courts Reject Groups' Push To Expand Universe Of CWA 'Point Sources', Inside EPA, 4/5/13
http://insideepa.com/201304042429937/EPA-Daily-News/Daily-News/courts-reject-groups-push-to-expand-universe-of-cwa-point-sources/menu-id-95.html
Summary: Federal courts have rejected separate efforts by environmentalists to define coal-loading facilities and chemically-treated utility poles as "point sources" that require Clean Water Act (CWA) permits -- rulings which could limit the impact of an earlier case regulating pesticide spraying that industry feared could subject other unregulated sources, such as power plants, farms and fertilizer applications, to regulation.

8 - EPA Aggregation Policy Alleged To Create Regional Split, Violating Air Law, Inside, EPA 4/4/13

http://insideepa.com/201304042429936/EPA-Daily-News/Daily-News/epa-aggregation-policy-alleged-to-create-regional-split-violating-air-law/menu-id-95.html
summary: EPA's decision to limit application of an appellate ruling on "aggregating" emissions from dispersed operations in air permitting decisions only to states in the appellate circuit creates a policy split among EPA's regions that violates the Clean Air Act, according to recent court filings in litigation challenging the agency's application of the ruling.

9 - EPA Informs Court of Plan to Reconsider Cellulosic Ethanol Requirement for 2011, BNA, 4/5/13
http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=30301712&vname=dennotallissues&jd=a0d7d4e7v6&split=0
Summary: The Environmental Protection Agency will voluntarily reconsider the cellulosic ethanol blending requirement for 2011, the agency told a federal appellate court in an April 3 motion (American Fuel & Petrochemical Manufacturers v. EPA, D.C. Cir., No. 12-1249, 4/3/13).

10 - GE opens $110M Okla. facility to study oil and gas, EENEWS, 4/5/13
http://www.eenews.net/energywire/2013/04/05/5
Summary: Seeking to grow its stake in the booming U.S. unconventional energy industry, General Electric Co. this week announced plans for an oil and gas research center in Oklahoma City.



KFOX14 News
Border residents protest ASARCO Demolition

Related

EL PASO, Texas —

With a little over a week until the demolition of the ASARCO smokestacks, the movement to stop their implosion will continue with a protest.

Thursday, opponents of the demolition announced they plan to protest the demolition this weekend. They will gather at the International Park off Paisano Drive across the street from the old smelter site.

Their opposition of the demolition ranges from health hazards to the fear of losing what they say is an important part of El Paso's history.

"I love this area -- the ASARCO, the train, Mount Cristo Rey. I think it's a landmark here in El Paso, and I think it would be a shame to demolish it," said Margarita Barrio.

The protest is scheduled to take place at 4 p.m. Saturday.

KFOX14 will take you into the blast zone on air and online with live coverage of the ASARCO smokestacks' demolition from 6 a.m. to 7:30 a.m. April 13. The next day, our coverage continues with the implosion of El Paso City Hall from 8:30 a.m. to 9:30 a.m.

Texas Brine to conduct depth test on cavern

BY DAVID J. MITCHELL

River Parishes bureau

Texas Brine Co. plans to conduct a key test Tuesday on the depth of its failed Napoleonville Dome salt cavern, the suspected cause of a large sinkhole in Assumption Parish, company officials said.

The test is expected to show how close the salt dome cavern is to being completely filled with rock, a point when scientists suspect the grumbling, growing swampland sinkhole may finally begin calming down.

The last depth test was conducted Jan. 31, said Sonny Cranch, Texas Brine spokesman.

Since then, the cavern access well used to conduct the test was partially blocked with salt after its well casing was not replaced following an earlier round of tests, parish officials said.

John Boudreaux, director of the parish Office of Homeland Security and Emergency Preparedness, said that on Monday and Tuesday, Texas Brine contractors were able to drill out about 900 feet of salt blockage in the access well and install new casing wide enough to accommodate testing equipment.

The two-month gap in depth tests occurred during an active seismic period around the cavern and under the sinkhole.

At the surface during that period of tremors, dozens of trees fell into the sinkhole as it grew to a surface area of more than 13 acres. Cranch said the new test should show any underground effects.

“That is going to give us a better picture of what has happened with the seismic activity that has been recorded recently,” Cranch said.

Drillers will send a tool called a sinker bar down the access well until it hits bottom, providing a measurement of the cavern’s depth, Cranch said. They also will conduct a sonar survey of the cavern’s remaining open interior, he said.

Scientists think the cavern was broached by a sidewall failure at more than 5,000 feet underground last year, allowing millions of cubic yards of rock outside the salt dome to flood into the cavern and force the sinkhole to emerge at the surface by early Aug. 3.

Formerly tightly consolidated sedimentary rock layers, including petrified sand and clay deposited across the area millions of years ago, are believed to have broken up, becoming a fractured mass being forced into the cavern while also setting off periodic tremors.

Patrick Courreges, spokesman for the Louisiana Department of Natural Resources, said experts cannot say for sure what is happening inside the cavern without the depth test.

“It is expected that it is going to be fuller, but how much, we don’t know,” Courreges said.

Boudreaux said that when drillers cleared out the access well and got back into the cavern earlier this week, they allowed the drill bit to descend another 100 feet, but it did not hit bottom.

The failure of the cavern has prompted an eight-month evacuation of 150 residences in the Bayou Corne and Grand Bayou communities near the sinkhole as state and parish authorities have dealt with the emergency. The Natural Resources Department recently formed a blue ribbon commission of experts to help in determining when it would be safe for area residents to return to their homes. In the meantime, Texas Brine is moving ahead with buyout offers for some of those residents.

Dissolved with fresh water into the western flank of the subterranean salt dome during a period of nearly 30 years, the cavern was shut down in mid-2011 and filled with brine before the failure.

Measurements before the 20-million-barrel cavern failed showed the conical cavity stretched from a depth of 3,400 feet to a depth of 5,655 feet. It was about 150 feet wide at the top and 300 feet wide at the bottom.

The first measurements of the cavern depth in late September after the failure happened — and after the new access well was drilled into the formerly sealed cavern — put the depth of the partially filled cavity at 4,000 feet, or about three-fourths full.

Since then, rock has continued to move into the cavern, filling an additional 223 feet of depth and leaving the cavern 83 percent filled by Jan. 31, according to figures from Cranch.

That translates to a new, shallower depth of 3,777 feet, with 377 feet of empty space remaining, as of Jan. 31.

Copyright © 2011, Capital City Press LLC • 7290 Bluebonnet Blvd., Baton Rouge, LA 70810 • All Rights Reserved

» Print

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to colleagues, clients or customers, use the Reprints tool at the top of any article or visit: www.reutersreprints.com.

Exxon, EPA say air quality at spill in Arkansas improving

Thu, Apr 4 2013

WASHINGTON (Reuters) - Air quality in the Arkansas neighborhood where an Exxon Mobil Corp pipeline leaked thousands of barrels of Canadian crude has improved but was still unhealthy where workers were cleaning it up, the company and the U.S. environment regulator said on Thursday.

Readings of air quality "are below levels likely to cause health effects for the general population with the exception of the cleanup areas where the emergency responders are directly working," the Environmental Protection Agency said.

"As cleanup continues, contaminant levels continue to decrease," it said.

Exxon has been digging out oil-soaked lawns and replacing them with fresh sod in the neighborhood in Mayflower, Arkansas, where the government estimated up to 5,000 barrels of Canadian crude leaked on Friday.

The Pegasus line, which can transport more than 90,000 barrels per day of Canadian crude to Texas from Illinois, remained shut with no estimate of when it would restart.

Exxon said its data showed levels of benzene, a component of crude linked to cancer, had fallen in days following the leak.

On Sunday benzene had been detected 10 times in the area where workers are cleaning up the crude, with the highest concentration recorded at 0.8 parts per million. By Tuesday, benzene was detected three times in the work area with the highest level at 0.3 ppm.

Monitors detected that instances of volatile organic compounds (VOCs), which are linked to ear and throat irritation and kidney and liver damage, had also fallen. Exxon data detected VOCs 43 times on Sunday. By Tuesday that had fallen to 35 instances.

Twenty-two homes were evacuated by authorities after the leak and residents had not returned by Thursday.

Workers cleaning up the spill were using breathing equipment where necessary, the EPA said.

Residents in the area surrounding the spill had complained of a strong asphalt odor in the days after the leak. That odor has died down considerably since Monday, residents said on Thursday.

(Reporting by Timothy Gardner, Additional reporting by Edward McAllister in Mayflower, Arkansas; Editing by Eric Beech)

© Thomson Reuters 2011. All rights reserved. Users may download and print extracts of content from this website for their own personal and non-commercial use only. Republication or redistribution of Thomson Reuters content, including by framing or similar means, is expressly prohibited without the prior written consent of Thomson Reuters. Thomson Reuters and its logo are registered trademarks or trademarks of the Thomson Reuters group of companies around the world.

Thomson Reuters journalists are subject to an Editorial Handbook which requires fair presentation and disclosure of relevant interests.

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to colleagues, clients or customers, use the Reprints tool at the top of any article or visit: www.reutersreprints.com.

http://insideclimatenews.org/news/20130405/insideclimate-news-reporter-threatened-arrest-ark-oil-spill-site

InsideClimate News reporter Lisa Song was threatened with arrest on Wednesday after she entered the command center for the cleanup operation in Mayflower, Ark., where a major oil pipeline spill occurred on Friday.

Song went to the command center in hopes of reaching representatives of the U.S. Environmental Protection Agency and the Department of Transportation. She had been told they were working out of the command center, but had been unable to get their names or contact information despite multiple requests to the agencies.

Thousands of barrels of oil from Alberta's tar sands region—similar to the diluted bitumen that would flow through the controversial Keystone XL project—spilled into a residential neighborhood from a pipeline owned by ExxonMobil, forcing the evacuation of 22 homes. Those families are now being housed in hotels at Exxon's expense.

Song had tried to enter the command compound on Tuesday, but was turned away by a security guard. On Wednesday, however, a different guard was on duty and he waved her through the gate. Inside, a second person directed her to the warehouse that houses the command center.

Inside the building, Song went to a table with a sign that said "public affairs," where she was given the name and contact information for Austin Vela, the EPA spokesman at the site. Before she could get the name of a DOT representative, however, Exxon spokeswoman Kim Jordan spotted Song and told her to leave. A second person arrived and said, "You've been asked by security to leave. If you don't you'll be arrested for criminal trespass."

Song left the compound.

InsideClimate News lodged complaints with the EPA and with officials at the Pipeline and Hazardous Materials Safety Administration (PHMSA), the division of the DOT that regulates interstate pipelines.

A PHMSA spokeswoman responded and said the agency has two investigators in Mayflower and no public information officer, and is not responsible for site access.

The EPA, which is the designated on-scene coordinator for the investigation in Mayflower, did not respond to questions about whether Song should have been evicted from the command center.

Timothy Smith, professor emeritus of journalism at Kent State University and founder of the Media Law Center for Ethics and Access, said that if the command center was on Exxon property and Song had refused to leave, the company could, indeed, have asked local law enforcement officials to arrest her.

But Smith said he couldn't understand why the "DOT and EPA should be hunkered down behind walls thrown up by a private company."

"This type of operating procedure is unusual. I can't figure out why it would be beneficial to either Exxon or DOT to control information about this event," Smith said.

"While the Arkansas spill is certainly embarrassing given the controversy about the Canadian pipeline, by denying access, they are making it worse."

Song reported on Tuesday that Exxon is controlling the flow of information about the spill. The phone number of the command center goes to an ExxonMobil answering service in Texas, and for almost a week the official daily updates released by the command center contained only three logos: ExxonMobil, the city of Mayflower and Faulkner County, Ark.

Vela, the EPA spokesman, said the agency's logo was omitted by accident. It appeared on Thursday's update.

The area where the spill occurred is also off limits to the media. On Tuesday afternoon, a sheriff's deputy told Song and two college journalism students to leave when they tried to take pictures at a spot near the incident command site, where some of the oil was being removed. On Wednesday, the Arkansas Democrat-Gazette reported that the Federal Aviation Administration has set up a temporary no-fly zone over the spill area, and that "only relief aircraft under direction of Tom Suhrhoff" are allowed in the zone. A LinkedIn profile says Suhrhoff is an aviation advisor at ExxonMobil.

About 600 people at the site are working for Exxon and various contractors. The EPA has five employees on site.

The ExxonMobil pipeline that ruptured was carrying Wabasca Heavy crude, a type of bitumen mined in Canada's oil sands region. Because bitumen is too thick to flow through pipelines, it is thinned with natural gas liquids and turned into dilbit, or diluted bitumen.

In 2010, Canadian dilbit spilled into Michigan's Kalamazoo River from a ruptured pipeline, and oil is still being found in sections of the riverbed today, almost three years later. If the Keystone XL pipeline is approved, it will carry dilbit from Alberta, Canada to the U.S. Gulf Coast. As it passes through Nebraska, the Keystone would cross one of the nation's largest and most important water sources, the Ogallala aquifer.

Song has been covering the Keystone project, the Michigan spill and pipeline safety issues since 2011. After she left the command center on Wednesday, the ExxonMobil spokeswoman sent her an email with the name and contact information for Bill Lowry, a DOT representative. And Vela, the EPA spokesman, called and said he would try to arrange a tour of the site.

On Thursday afternoon, Vela met Song and gave her a tour of the command center parking lot. He also allowed her to take photos at the edge of a nearby cleanup site. They were accompanied by an ExxonMobil spokesman.

Insider -- April 5, 2013

EPA Readies Radiation Guide

EPA air chief Gina McCarthy's nomination to be the next agency administrator could get a boost after the White House completed a review of a long-pending EPA radiation guide:

> Just-Cleared EPA Radiation Guide Seen Aiding McCarthy's Nomination
> After nearly two years of review, the White House has cleared EPA to issue a controversial draft guide for protecting humans from nuclear power plant meltdowns and other radiological incidents, a move that environmentalists say could be timed to win support from Republicans for Gina McCarthy's nomination to lead EPA because the guide, which she oversaw as head of the air office, opens the door to weakening Superfund cleanup levels.

Background on the radiation guide from *Inside EPA's Superfund Report*:

> Pending Revisions To General Radiation Guide Prompt Activist Concern
> Officials in EPA's Office of Radiation & Indoor Air (ORIA) say revisions to a controversial guide on setting radiation exposure limits for the general public are still "on the table," prompting concerns from environmentalists that an effort to weaken the agency's standards is still alive.
>
> Activists To Meet With Top EPA Officials Over Radiation Policy Concerns
> Environmentalists will meet with high-level EPA officials Oct. 31 in order to discuss the activists' fears that the agency is undermining its own radiation protection standards through its response to the Japanese nuclear crisis and its failure to resolve an ongoing controversy regarding its draft nuclear emergency guide, an activist says.

Groups Eye Coal Exports Suit

Environmentalists plan to file suit against various companies alleging Clean Water Act violations stemming from releases of coal and other “pollutants” from rail cars used for coal exports:

> Groups' Planned Suit Over Coal Exports Tests CWA Oversight Of Rail Cars
> Environmentalists who are fighting efforts to expand coal exports are threatening to sue industry groups over the water pollution impacts of transporting the fuel and its byproducts, indicating they will seek a court ruling that rail cars carrying coal and other pollutants are “point sources” requiring discharge permits under the Clean Water Act (CWA) -- though the activists admit that the cars may be “unpermittable.”

Engine Air Rule Faces Lawsuits

EPA's maximum achievable control technology air toxics rule and new source performance standards for reciprocating internal combustion engines faces several legal challenges:

> Environmentalists, Delaware Sue EPA In Bid For Stricter Generator Air Rule
> Environmentalists and Delaware are suing EPA to try and scrap what they claim are unlawful exemptions in the

agency's air toxics rule for diesel generators that will allow for increased pollution, though their challenge faces a competing lawsuit filed by a group of rural electric cooperatives that claims the emissions rule is too stringent.

Court Limits Superfund Claims

The U.S. Court of Appeals for the 9th Circuit has ruled that an insurance company is limited in collecting reimbursements from third parties through Superfund section 112(c):

Appeals Court Precedent Limits Insurers' Subrogation Rights Under CERCLA
In a potentially precedential ruling, a divided federal appellate court has found that insurance companies cannot use the Superfund law's cost recovery provision to recover pollution-related insurance payouts from third parties unless the insurer itself directly incurred environmental response costs.

EPA Weighs SAB's IRIS Role

EPA Integrated Risk Information System (IRIS) staff “will have to go back and think about” a push by an advisory panel for more involvement in EPA's IRIS studies, says an agency source:

EPA Weighs Options For Giving SAB's IRIS Panel Early Review Role
EPA officials are reconsidering the role that its new Science Advisory Board (SAB) committee will play in reviewing influential Integrated Risk Information System (IRIS) chemical assessments, after many of the committee's members raised concerns about its limited role but declined to formally call on the agency to expand it.

A key IRIS reform advocate's comments on a National Academy of Sciences review of the process highlight long-standing tensions over the agency's risk assessment program:

Key Advocate Fears NAS Review May Hinder Efforts To Speed IRIS Advice
Richard Denison, a leading environmentalist on chemical toxicity issues, is cautioning that the National Academy of Sciences' (NAS) panel reviewing EPA's Integrated Risk Information System (IRIS) program will give limited advice because the panel is only considering ways to improve EPA science, not ways of ensuring it can release scientifically vigorous assessments in a timely way.

EPA Fights Pesticide Suit

EPA says a suit over a pesticide tolerance should be dismissed because the agency relied on an appropriate ethical standard when selecting a study on the pesticide's human health risks:

After Talks Fail, EPA Seeks To Dismiss Novel NRDC Suit On Pesticide Safety
EPA is urging an appeals court to dismiss a suit filed by the Natural Resources Defense Council (NRDC) over its decision to drop use of a strict safety factor to protect children from the pesticide dichlorvos, suggesting the agency has failed to cut a deal with NRDC over when it must use the additional 10X safety factor when setting safety tolerances.

Push For EPA IST Rules

Environmentalists are ramping up their push for EPA to issue first-time mandates for facilities to use “inherently safer” technology (IST) by citing the findings of a recent Inspector General report:

IG Criticism Of EPA Risk Plan Inspections May Bolster Push For IST Rules
A new Inspector General (IG) report criticizing EPA's inspection of facilities' plans for reducing risks from chemical

releases may boost a bid for agency rules to mandate “inherently safer” technology (IST) at industrial plants, an advocate of such rules says, as requiring IST reviews as part of the inspections could address some of the IG's concerns.

The Department of Homeland Security has used its incomplete risk assessment approach to ascribe risk levels to 3,500 high-risk chemical facilities, says the Government Accountability Office:

GAO Criticizes DHS' Chemical Facility Security Risk Assessment Process

The Government Accountability Office (GAO) is criticizing the risk assessment process the Department of Homeland Security (DHS) uses to assess the security of high-risk chemical facilities under its Chemical Facilities Anti-Terrorism Standards (CFATS), suggesting the agency may have to reassess several thousand chemical facilities.

Inside EPA
Clean Air Report
Water Policy Report
Superfund Report
Inside Cal/EPA
Risk Policy Report
Defense Environment Alert
Environmental Policy Alert

Air
Water
Waste
Energy
Climate Policy Watch
On Capitol Hill
Budget
Litigation
Toxics
Natural Gas
Election 2012

Daily News
Documents
Insider
Blog

SPECIAL REPORTS

Federal Facilities Watch
Outlook 2013

About Us
Terms and Conditions
Privacy Policy
Home Page

Economical site license packages are available to fit any size organization, fror a few people at one location to company wide access. For more information on how you can get greater access to InsideEPA.com for your office, contact Online Customer Service at 703-416-8505 or **iepa@iwpnews.com**.

© 2000-2013. Inside Washington Publishers | Contact Us

INSIDEEPA.COM
an online news service from the publishers of Inside EPA

Daily News

Oil Industry Claims EPA 'Tier III' Fuel Rule Would Yield 'Marginal' Benefits

Posted: April 4, 2013

EPA's proposed “Tier III” fuel rule would produce only “marginal” emissions reductions benefits and is not necessary to help automakers meet tighter vehicle emission standards, according to the American Petroleum Institute's (API) latest analysis aiming to rebut EPA's and auto companies' support for the rule.

API's Bob Greco said on an April 4 conference call that the ozone reduction benefits of the Tier III rule “would only be marginal at best,” and that advanced vehicles are likely to only constitute a small percentage of the vehicle fleet in the coming years. But environmentalists are strongly defending the rule, arguing in a new study that the expected benefits are better than EPA has projected.

EPA in its March 29 proposal tightens emissions standards for gasoline-powered vehicles, including nitrogen oxides, particulate matter and other conventional pollutants, and tightens the existing limit on sulfur in gasoline down from 30 parts per million (ppm) to 10 ppm. The proposal also largely harmonizes national conventional emissions standards for vehicles with California's recent updates to its low-emission vehicle program (LEV-III), and proposes to make ethanol blends of 15 percent (E15) its “certification” fuel to use for engine and emissions tests.

The rule is a notice of proposed rulemaking (NPRM) which EPA will take comment on for 30 days following its eventual publication in the *Federal Register*, and use those comments to shape a final version of the rule. EPA and the White House faced 11th-hour calls from the refinery industry and others to issue an advance notice of proposed rulemaking (ANPRM), which would have allowed EPA to seek comment on the agency's rationale for the rule before deciding whether to craft an NPRM.

But Greco on the April 4 call argued that the refiners have already made significant investments to comply with Tier II rules, which EPA issued in 2000 and strengthened the sulfur cap in gasoline from 300 pm to 30 ppm. Pointing to an April 4 study commissioned by API from Environ Consulting Group, Greco argued that air quality would improve little in implementing the Tier III standards compared to the reductions gained in implementing Tier II.

“Overall, the modeling results suggest that large improvements in summertime ambient ground-level ozone concentrations resulted from the switch from Tier 1 to Tier 2 standards. However, relatively very small additional reductions in 2022 ozone levels are predicted to result from the transition to a Federal standard similar to the California LEV III standard, even when considering emissions reductions due to a lower gasoline sulfur content in the LEV III scenario,” the study reads.

Greco argues that EPA in the proposed rule ignores the results of earlier sulfur reductions that have led to “significant reduction in ambient ozone levels and will lead to further ozone reductions for the next decade,” adding that Tier III rules will add no substantial benefit while imposing “significant costs on making gasoline.” He also argued that the costs of the rule need to be considered along with EPA's other mandates for the refinery sector, including the prospects for strengthening fuel volatility requirements for gasoline, greenhouse gas rules for the sector and forthcoming stricter ozone ambient air standards.

Automakers' Concerns

Greco on the call also countered claims by EPA and automakers that the 10 ppm sulfur level is necessary to help automakers comply with not only the tighter emission standards but also stronger fuel economy and greenhouse gas standards for model year 2017-2025 vehicles -- as proposed, the Tier III requirements would go into effect in 2017. He said that similar arguments were made when European countries decided to tighten their sulfur cap to 10 ppm, but that only 10 percent of the continent's fleet has the advanced emissions technology requiring the lower sulfur fuel.

He explained that demand and penetration for advanced emissions technology “peaked at 10 percent” of European vehicles, suggesting the same result will occur in the United States. The experience in Europe, Greco argued, downplays the necessity of lower sulfur fuel for advanced vehicles and also weakens projected environmental benefits the rule could provide.

But environmentalists and clean air activists are strongly supporting the standard, with the American Lung Association (ALA) in an April 4 report stating that the rule will provide greater benefits than EPA projects. For instance, ALA projects that the rule will prevent more than 2,500 premature deaths by 2030 due to reduced ozone and particulate matter levels, while EPA projects a range of premature deaths prevented of between 820 and 2,400.

And ALA says the benefits of Tier III will likely surpass the benefits outlined in the study, as their report only examines the major population centers of the Eastern United States. “The actual benefits of cleaner gasoline and vehicle standards will likely be much higher” when taking into account the West and Texas, ALA says in a press release.

Related News: Air Energy

2430035

Inside EPA
Clean Air Report
Water Policy Report
Superfund Report
Inside Cal/EPA
Risk Policy Report
Defense Environment Alert
Environmental Policy Alert

Air
Water
Waste
Energy
Climate Policy Watch
On Capitol Hill
Budget
Litigation
Toxics
Natural Gas
Election 2012

Daily News
Documents
Insider
Blog

SPECIAL REPORTS
Federal Facilities Watch
Outlook 2013

About Us
Terms and Conditions
Privacy Policy
Home Page

Economical site license packages are available to fit any size organization, fror a few people at one location to company wide access. For more information on how you can get greater access to InsideEPA.com for your office, contact Online Customer Service at 703-416-8505 or **iepa@iwpnews.com**.

© 2000-2013. Inside Washington Publishers | Contact Us

INSIDEEPA.COM
an online news service from the publishers of Inside EPA

Daily News

Courts Reject Groups' Push To Expand Universe Of CWA 'Point Sources'

Posted: April 4, 2013

Federal courts have rejected separate efforts by environmentalists to define coal-loading facilities and chemically-treated utility poles as "point sources" that require Clean Water Act (CWA) permits -- rulings which could limit the impact of an earlier case regulating pesticide spraying that industry feared could subject other unregulated sources, such as power plants, farms and fertilizer applications, to regulation.

In an April 3 ruling the U.S. Court of Appeals for the 9th Circuit dismissed a suit that sought to require discharge permits for utility poles because "the poles are not 'discernible, confined and discrete conveyance[s]'" that channel and control stormwater.

And in Alaska, a federal judge March 28 used similar reasoning to reject environmentalists' attempt to sue coal and railroad companies for coal and coal dust deposition from a loading facility under the CWA, saying that the wind -- which deposits coal in surface waters near the challenged facilities -- can never be a "point source" of water pollution.

"[T]he coal carried to the Bay by the wind as airborne dust cannot constitute a point source discharge. . . . wind is the polar opposite of a 'discernible, confined and discrete conveyance,'" District Judge Timothy M. Burgess, of the U.S. District Court for the District of Alaska, wrote in his March 28 ruling granting partial summary judgment to industry defendants in *Alaska Community Action on Toxics, et al. v. Aurora Energy Services, LLC, et al.*

Environmentalists in that case sought relief for what they say is a massive coal dust problem in Seward, AK, that they have been unable to tackle using fugitive dust control provisions in the Clean Air Act. The suit charges that Aurora Energy, LLC, a coal company, and the Alaska Railroad are violating their National Pollutant Discharge Elimination System (NPDES) permit by allowing airborne coal dust and coal debris from hauling activities to enter nearby Resurrection Bay.

Burgess's decision appears to place limits on the precedent created by recent cases where courts have held held that pesticide sprayers that operate adjacent to protected waters are point sources requiring permit coverage -- most notably *National Cotton Council, et al. v. EPA*, decided in 2009 by the U.S. Court of Appeals for the 6th Circuit.

In pesticide-spraying cases, Burgess writes, "the courts found that pesticides *channeled through a spraying apparatus* on a truck or plane, when sprayed *directly over water*, met the statutory definition of a point source discharge." Without a discrete conveyance similar to a pipe or nozzle projecting coal dust directly into water, Burgess says, the cases are not analagous.

After the Supreme Court declined to review the *Cotton Council* case, some industry officials feared it could open the door to regulation of dispersed emissions from power plants, livestock operations and fertilizer applications, which have traditionally been viewed as non-point sources.

'Welcome' Ruling

An industry lawyer says the new ruling is "welcome" because it seems to place limits on the pesticide cases' precedential effect, particularly after environmentalists have sought to regulate airborne materials through the water law. "We've seen for some time an attempt to regulate dust and particles from things like farms and coal regulated under the Clean Water Act, and there's been a question of where this is going to end -- are we really going to get Clean Air Act issues pulled into the water act? In that sense this is a welcome ruling," the source says.

In *Lois Alt v. EPA*, currently before a federal district court in West Virginia, EPA is asking the judge to dismiss an industry suit seeking a declaration that farms are not liable under the CWA for chicken feathers and other airborne releases from an animal feeding operation. The agency argues that the enforcement order underlying the case is no longer valid -- although industry claims that the agency is trying to regulate such emissions elsewhere.

And a North Carolina state court ruled in January that feathers and other airborne material from poultry farms can be regulated under the water law, though that reasoning has not been adopted in a federal court.

Sierra Club and other environmentalist groups are also preparing to sue energy and rail companies over alleged discharges of coal from train cars hauling the fuel, saying that the cars are covered by the CWA definition of "point source," which includes "rolling stock."

But that argument appears novel, according to both the industry attorney and an environmentalist lawyer who said they were unfamiliar with any case that sought to regulate train cars under the water law.

The industry source adds that Burgess's reasoning in the Alaska case could be seen as applying to power plants as well, short-circuiting any attempt to require CWA permits for smokestacks.

"It could reach there . . . a smokestack is obviously a discrete thing, but it's not spraying stuff directly into the water, which is where this court drew the line," the source says.

Stormwater Dischargers

Meanwhile, the 9th Circuit April 3 affirmed a lower court in rejecting environmentalists' arguments that utility poles discharge and discard the wood preservative pentachlorophenol and other chemicals in violation of the CWA and the Resource Conservation & Recovery Act (RCRA).

The 9th Circuit in *Ecological Rights Foundation v. Pacific Gas & Electric Company and Pacific Bell Telephone Company* found that "discharges of stormwater from the utility poles were neither a 'point source discharge' nor 'associated with industrial activity," relying in part on the Supreme Court's recent decision in *Decker v. Northwest Environmental Defense Center*, a case involving stormwater from logging roads. The panel also found that wood preservative that escaped from the utility poles was not a solid waste under RCRA.

The 9th Circuit acknowledges that there is ambiguity in the CWA over whether utility poles are point sources but concludes "that, in the absence of any guidance from EPA, utility poles simply are not 'discernible, confined and discrete conveyance[s]'" that channel and control stormwater.

Circuit Judge Andrew D. Hurwitz concurred with the opinion written by Circuit Judge Consuelo M. Callahan "except insofar as it holds that utility poles cannot be point sources for purposes of the Clean Water Act under circumstances not presented by this case." But he says in his one-paragraph concurrence that "[r]esolution of this difficult issue is entirely unnecessary, given the opinion's conclusion -- which I join -- that the defendants' utility poles are not 'associated with industrial activity.'"

Permit 'Shield'

In addition to the "point source" issue, Burgess' ruling holds that the energy companies' "permit shield" protects them from liability for solid coal accidentally discharged from hauling or other activities from the Aurora facility. Even though the companies' discharge permit does not specifically allow for coal or coal dust discharges, regulators were aware that some coal would enter nearby waters when they approved the document, Burgess writes.

"[A]ctions and statements by EPA and [the Alaska Department of Environmental Conservation], made shortly after EPA issued the General Permit, indicate that the discharges were not only 'reasonably contemplated' by EPA, but were actively regulated by the agencies under the General Permit."

Burgess's decision draws heavily on the 4th Circuit's decision in *Piney Run Pres. Assoc. v. County Comm'rs*, where the appellate court ruled that if the scope of pollutants has been disclosed to the permitting authority, then the permit-holder is shielded from liability, if the discharges could be "reasonably anticipated" when the permit was crafted.

Though the new ruling does not expand on *Piney Run*, the industry attorney says it is "a positive development" because it expands the reach of the 4th Circuit precedent.

"The court could easily have done a cursory analysis and said 'anything not specified here is not kosher,' but they went farther," the attorney says. -- *David LaRoss & Lara Beaven*

Related News: Litigation Water

2429937

Inside EPA
Clean Air Report
Water Policy Report
Superfund Report
Inside Cal/EPA
Risk Policy Report
Defense Environment Alert
Environmental Policy Alert

Air
Water
Waste
Energy
Climate Policy Watch
On Capitol Hill
Budget
Litigation
Toxics
Natural Gas
Election 2012

Daily News
Documents
Insider
Blog

SPECIAL REPORTS
Federal Facilities Watch
Outlook 2013

About Us
Terms and Conditions
Privacy Policy
Home Page

Economical site license packages are available to fit any size organization, fror a few people at one location to company wide access. For more information on how you can get greater access to InsideEPA.com for your office, contact Online Customer Service at 703-416-8505 or **iepa@iwpnews.com**.

© 2000-2013. Inside Washington Publishers | Contact Us

INSIDEEPA.COM
an online news service from the publishers of Inside EPA

Daily News

EPA Aggregation Policy Alleged To Create Regional Split, Violating Air Law

Posted: April 4, 2013

EPA's decision to limit application of an appellate ruling on "aggregating" emissions from dispersed operations in air permitting decisions only to states in the appellate circuit creates a policy split among EPA's regions that violates the Clean Air Act, according to recent court filings in litigation challenging the agency's application of the ruling.

A group representing major energy producers and manufacturers is suing the agency over its response to a U.S. Court of Appeals for the 6th Circuit ruling in *Summit Petroleum Corp. v. EPA* scrapping the agency's "functional interrelationship" test to help in determining whether to aggregate sources. Aggregation, or combining, emissions can push dispersed operations over the threshold for triggering stricter and costlier "major" source air permits.

Following the ruling, EPA issued a memo saying that the functional interrelationship test should no longer be used in the 6th Circuit states of Michigan, Ohio, Tennessee and Kentucky. Michigan and Ohio are also part of EPA Region V, while Tennessee and Kentucky are part of EPA Region IV, which covers the southeast.

But the National Environmental Development Association's Clean Air Project (NEDA/CAP) claims in its D.C. Circuit suit over the policy memo that the decision to limit the ruling's scope violates the air law. The group also challenges the constitutionality of the functional interrelationship test that remains in other states.

NEDA/CAP outlined its claims in a nonbinding statement of issues filed March 25 in the D.C. Circuit, saying the agency's policy on the ruling is "highly subjective," creating uncertainty for facility operators. EPA has avoided a formal rulemaking on the issue and has therefore refused to "establish a bright line test" for when regulators can be expected to aggregate, creating uncertainty that violates the due process clause of the constitution, the filing says.

The group suggests in the filing that it will ask the court to rule that EPA's memo to its 10 regional offices directing regulators to apply the 6th Circuit ruling only in the four states which fall under that circuit's jurisdiction is unlawful.

The statement of issues suggests that NEDA/CAP, which represents a handful of major companies including BP America, Boeing, Procter & Gamble, Georgia-Pacific and ExxonMobil, intends to argue in the suit that the Dec. 21 memo and the agency's underlying aggregation policies violate provisions of the air law requiring regional consistency, Administrative Procedure Act (APA) rulemaking requirements and constitutional doctrine.

One industry attorney says the D.C. Circuit suit, *NEDA/CAP v. EPA*, suggests that "the rules are so messed up, there's no industry certainty" as a result of EPA's policy. The source says the statement of issues "basically argues the same merits as" *Summit* in challenging the functional interrelationship prong of the agency's aggregation test.

Aggregation Test

EPA first detailed the test in a 2009 memo from agency air chief Gina McCarthy, which says permit writers should assess whether facilities are "contiguous or adjacent," whether they are in common control and whether they are part of the same industrial grouping -- the same factors listed in a Bush-era memo from then-acting air chief William Wehrum. The Wehrum memo said physical proximity was the most important factor in determining adjacency, but the 2009 McCarthy memo included "functional interrelatedness" as a significant consideration.

Critics of the functional interrelatedness test said its use was more likely to trigger stringent "major" source Clean Air Act permitting mandates for dispersed operations.

EPA's decision to apply the 6th Circuit ruling on the functional interrelatedness test only with the *Summit* court's jurisdiction of four states creates an unlawful policy split among EPA's regions, NEDA/CAP says -- a rare challenge to the precedent known as the doctrine of non-acquiescence.

This would require two regions to follow different aggregation policies in different states within the regions. While as a general rule of law, an agency is not under obligation to apply an appellate court decision outside of the circuit of decision, some courts have found limited exceptions to that rule, but challenges to the doctrine have been relatively rare, the industry source says.

"The flip-side is that sometimes EPA wins in a circuit" making it a "kind of a little dangerous proposition" for industry to ask for courts to consider the question of how narrowly a ruling should apply, the source adds.

An environmentalist, however, acknowledges that because the Clean Air Act contains a provision requiring regional consistency on EPA policies, "this is NEDA/CAP's strongest argument," noting that "EPA will not be considering interrelatedness in their adjacency determinations in Michigan, Ohio, Kentucky and Tennessee."

Industry is urging EPA to either nationally apply the 6th Circuit ruling or codify the aggregation policy in a formal rulemaking, which would allow it to be challenged in court on the merits, sources say.

Industry attorneys criticized the EPA memo as creating an unfair advantage for companies operating within the 6th Circuit states because they would face potentially less stringent permitting requirements. One source said previously that the policy to implement the ruling only within the the four 6th Circuit states is "not a sustainable position" because it creates a "patchwork problem" putting some industrial operators at an unfair advantage.

For example, EPA Regions IV and V each contain two of the 6th Circuit states, but also contain other states in which the functional interrelatedness test may still be enforced in permitting decisions, creating not only a split among the agency's regional offices but also among two specific agency regions' members states.

'Uniform' Application

In the statement of issues, NEDA/CAP asks the court to consider whether the memo violates section 301(a)(2) of the Clean Air Act, requiring EPA to "assure fair and uniform application by all EPA Regional Offices of the criteria, procedures, and policies employed in implementing and enforcing" the air law.

NEDA/CAP also asks the court to consider whether EPA's refusal to acquiesce to the 6th Circuit ruling on a nationally consistent basis constitutes an unlawful abuse of agency discretion.

Though the statement of issues does not cite which cases NEDA/CAP might rely on to bolster its argument, there are instances in which federal appellate courts have discussed circumstances under which an agency's right to non-acquiescence may not be upheld, including a 1998 D.C. Circuit decision in *National Mining Association v. U.S. Army Corps of Engineers* and in a 1999 8th Circuit suit, *Harmon Industries v. Browner.*

The environmentalist notes, however, that courts have found that the Clean Air Act provision represents a "policy and not a substantive standard," on uniform agency policies, citing *Air Pollution Control District of Jefferson County v. EPA*, a 1984 6th Circuit decision finding that the language in the air law does not create substantive requirements that must be applicable to emissions limits for all sources within an area.

NEDA/CAP also asks the court to consider whether it is arbitrary and capricious, an abuse of discretion, or otherwise unlawful for EPA to issue a third memorandum on aggregation within the space of five years interpreting the definition of "adjacent" when the agency is yet to codify the definition in a formal rulemaking, suggesting an APA argument that the definition is tantamount to an illegal *de facto* rule. -- *Bridget DiCosmo* (bdicosmo@iwpnews.com)

Related News: Air Energy Litigation

2429936

Inside EPA
Clean Air Report
Water Policy Report
Superfund Report
Inside Cal/EPA
Risk Policy Report
Defense Environment Alert
Environmental Policy Alert

Air
Water
Waste
Energy
Climate Policy Watch
On Capitol Hill
Budget
Litigation
Toxics
Natural Gas
Election 2012

Daily News
Documents
Insider
Blog

SPECIAL REPORTS

Federal Facilities Watch
Outlook 2013

About Us
Terms and Conditions
Privacy Policy
Home Page

Economical site license packages are available to fit any size organization, fror a few people at one location to company wide access. For more information on how you can get greater access to InsideEPA.com for your office, contact Online Customer Service at 703-416-8505 or **iepa@iwpnews.com**.

© 2000-2013. Inside Washington Publishers | Contact Us

Bloomberg BNA Environment & Safety Resource Center™

Source: Daily Environment Report: News Archive > 2013 > April > 04/05/2013 > News > Energy: EPA Informs Court of Plan to Reconsider Cellulosic Ethanol Requirement for 2011

66 DEN A-1

Energy

EPA Informs Court of Plan to Reconsider Cellulosic Ethanol Requirement for 2011

By Andrew Childers

The Environmental Protection Agency will voluntarily reconsider the cellulosic ethanol blending requirement for 2011, the agency told a federal appellate court in an April 3 motion (*American Fuel & Petrochemical Manufacturers v. EPA,* D.C. Cir., No. 12-1249, 4/3/13).

It is "unlikely that upon reevaluation EPA would simply re-affirm the 2011 cellulosic biofuel standard without further analysis or explanation" after the U.S. Court of Appeals for the District of Columbia Circuit struck down the blending requirement for 2012, the agency said in its unopposed motion for a voluntary remand.

EPA asked the D.C. Circuit to hold petroleum industry lawsuits challenging the renewable fuel standard requirement to blend 6.6 million gallons of cellulosic biofuel into their fuels in 2011 during the reconsideration process.

The American Fuels & Petrochemical Manufacturers, American Petroleum Institute, and Western States Petroleum Association sued EPA in 2012 after the agency denied their petitions to reconsider the cellulosic ethanol blending requirement after none of the fuel was produced that year.

BNA Snapshot

American Fuel & Petrochemical Manufacturers v. EPA, D.C. Cir., No. 12-1249, 4/3/13

Key Development: EPA tells D.C. Circuit it will voluntarily reconsider the cellulosic ethanol blending requirement for 2011.

Potential Impact: EPA says it is "unlikely" it will maintain the 2011 cellulosic ethanol requirement after the court vacated a similar standard for 2012.

EPA's request came after the D.C. Circuit vacated the blending requirement for 2012 as "in excess of the agency's statutory authority" because the amount of cellulosic ethanol required substantially exceeded the amount produced that year (*American Petroleum Institute v. EPA*, D.C. Cir., No. 12-1139, 1/25/13; 18 DEN A-8, 1/28/13).

"When EPA established the 2011 cellulosic biofuel standard that is at issue in this case, EPA used basically the same method for projecting cellulosic biofuel production as EPA used when it established the 2012 standard," the agency said.

Petroleum Industry Hails Move

American Petroleum Institute spokesman Carlton Carroll told BNA April 4 that EPA's request is a "positive move."

"However, we want to see the EPA vacate the 2011 rule and hope that decision is made soon," he said.

Petroleum refiners and importers were required to purchase credits from EPA to satisfy their renewable fuel standard requirements because cellulosic ethanol was not being produced in 2011.

The Biofuel Producers Coordinating Council, Renewable Fuels Association, Growth Energy, and other ethanol producers said in an April 5 statement that the renewable fuel standard has been vital to establishing the cellulosic ethanol industry. However, they said reconsidering the 2011 standard would

have little impact on members' operations.

“Advanced biofuel companies across the United States have invested in technology development and construction of first-of-a-kind commercial scale refineries for cellulosic and other advanced biofuels,” the ethanol groups said. “EPA's implementation of the court order does not impact the industry's progress in developing technologies that reduce dependence on foreign oil and contribute to a cleaner environment.”

EPA has proposed requiring 16.55 billion gallons of cellulosic ethanol in 2013, a more than 60 percent increase compared to 2012 levels as the first commercial-scale cellulosic ethanol production facilities begin operation (22 DEN A-7, 2/1/13).

For More Information

EPA's motion for voluntary remand is available at http://op.bna.com/env.nsf/r?Open=smiy-96fppp.

Contact us at http://www.bna.com/contact/index.html or call 1-800-372-1033

ISSN 2167-8065
Copyright © 2013, The Bureau of National Affairs, Inc. Reproduction or redistribution, in whole or in part, and in any form, without express written permission, is prohibited except as permitted by the BNA Copyright Policy. http://www.bna.com/corp/index.html#V

5. TECHNOLOGY:

GE opens $110M Okla. facility to study oil and gas

Pamela King, E&E reporter

Published: Friday, April 5, 2013

Seeking to grow its stake in the booming U.S. unconventional energy industry, General Electric Co. this week announced plans for an oil and gas research center in Oklahoma City.

The $110 million facility, GE's first research center dedicated to a specific industry, is expected to create 125 high-tech engineering positions and provide a major boost to GE Oil & Gas, the company's fastest-growing division.

"Unconventional resources, and shale gas in particular, may be one of the biggest productivity drivers of our lifetime," GE Chairman and CEO Jeff Immelt said in a Wednesday statement announcing the research facility. "At GE, we see a tremendous opportunity in the oil and gas space."

Positioned near the headquarters of energy firms like gas giant Chesapeake Energy Corp., the Oklahoma City research outfit will also be near GE Oil & Gas' artificial lift business, which develops methods to make new oil fields more efficient and revive mature fields previously thought to be depleted. The division is a leading manufacturer of electric submersible pumps, a key piece of equipment in hydraulic fracturing operations that disperses fluid downhole, sending it into shale rock fractures to free up trapped oil and gas.

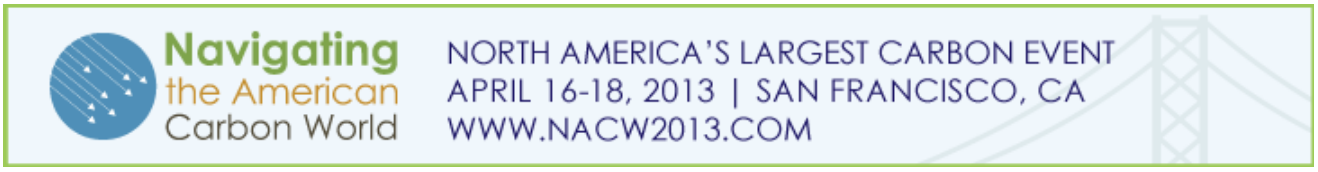
GE has not yet chosen an exact location for the new facility. The company said it is evaluating sites that will allow it to draw on resources from academic institutions like the University of Oklahoma as well as the city's skilled labor force.

"In Oklahoma, we know that America's energy security and economic wellbeing demand more domestic energy production," Gov. Mary Fallin (R) said in a statement. "Technology continues to be the key to unlocking new energy resources and effectively utilizing those we have already discovered. I am thrilled that GE, with its rich history of innovation, has chosen Oklahoma as the home for these new technologies."

The Oklahoma research center will be GE's seventh addition to its global research network, which boasts three U.S. locations, as well as one each in India, China, Germany and Brazil. The industries the facilities cover run the gamut from appliances to health care to electrical distribution.

"This new center is another step in [GE's $10 billion annual pledge to innovation] and helping create the next generation of technologies, which will make this 'unconventional' energy source conventional and 'sustainable,'" said Mark Little, senior vice president and chief technology officer for GE.

Advertisement



The Premier Information Source for Professionals Who Track Environmental and Energy Policy.

© 1996-2013 E&E Publishing, LLC Privacy Policy Site Map